

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

_____	X	
OSCAR MERCADO,	:	
	:	
Petitioner,	:	OPINION AND
	:	ORDER
	:	
v.	:	11-CV-6529 (ER)
	:	
JOHN LEMPKE, Superintendent, Five Points	:	
Correctional Facility,	:	
	:	
Respondent.	:	
_____	X	

RAMOS, D.J.:

Oscar Mercado, an incarcerated *pro se* litigant, filed this *in forma pauperis* petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 on September 13, 2011. The district court referred the case to the Magistrate Judge. The case was then reassigned to this Court.

On February 10, 2012, Respondent moved to dismiss on the ground that Mr. Mercado's petition was a "second or successive" petition as defined in 28 U.S.C. § 2244. On August 6, 2012, the Magistrate Judge issued her Report and Recommendation, recommending that the Court deny Respondent's motion to dismiss. In a letter to the Court dated August 8, 2012, the Westchester District Attorney's Office stated that Respondent would not be submitting objections to the Report and Recommendation.

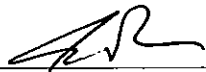
In the absence of any objections, the Court hereby ADOPTS the Magistrate Judge's Report and Recommendation.

The Court DENIES Respondent's motion to dismiss. The Clerk of the Court is respectfully directed to terminate this motion (Doc. 15).

Respondent is directed to serve and file an answer, and file any state court records not previously submitted to the court by November 13, 2012. Petitioner is directed to serve and file his reply by December 28, 2012.

It is SO ORDERED.

Dated: September 27, 2012
White Plains, NY



Edgardo Ramos, U.S.D.J.